



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

SMC

Docket No: 07975-98

6 April 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: TM1 (SW) [REDACTED], U [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 3Nov98 w/attachments
(2) NPC memo dtd 15Mar00
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the "not observed" performance evaluation for 2 July to 31 August 1998, or rewriting the comments in block 43 ("Comments on Performance") to read as follows: "This Not Observed Evaluation submitted due to transfer to Transient Personnel Unit, Guam due to pregnancy." After Petitioner had submitted her application, her reporting senior submitted a supplemental "not observed" report for the same period by transmittal letter dated 8 March 1999. Block 43 of the supplemental report is worded exactly as Petitioner specified in her application. The supplemental report and transmittal letter have been filed in Petitioner's naval record along with the contested original report. Copies of the original report, the letter of transmittal, and the supplemental report are at Tabs A, B, and C respectively.

2. The Board, consisting of Messrs. Kastner, Pauling and Taylor, reviewed Petitioner's allegations of error and injustice on 6 April 2000, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Block 43 of the contested original report reads as follows: "This not observed evaluation submitted due to unplanned transfer to Transient Personnel Unit, Guam after

reporting to this forward deployed sea command pregnant following a three year shore tour." Petitioner alleges this comment insinuates that her condition was planned to avoid sea duty, and will negatively impact on future advancements. She further contends that under the applicable performance evaluation instruction, pregnancy is not be mentioned except where necessary.

c. In his transmittal letter forwarding the supplemental report, Petitioner's reporting senior states it was not his intention to insinuate her pregnancy was planned to avoid sea duty; however, he now understands how such an intent could be read into the evaluation. Therefore, he submitted an updated evaluation reflecting the wording she suggested.

d. In correspondence attached as enclosure (2), the Navy Personnel Command office having cognizance over the subject matter addressed in Petitioner's application has recommended that the contested original evaluation be removed, together with the transmittal letter, and that the supplemental report be revised by deleting the words "due to pregnancy." This opinion confirmed Petitioner's assertion that under the applicable instruction, pregnancy is not to be mentioned in a performance evaluation report unless necessary to explain other matters in the report. The opinion further stated that the reporting senior acknowledged the error in the original report.

CONCLUSION:


Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting removal of the contested original report and the transmittal letter, leaving the supplemental report in the record as is.

The Board agrees with the advisory opinion in concluding that the original report and transmittal letter should be removed, leaving in the record the supplemental report reflecting the wording Petitioner suggested. However, they do not accept the advisory opinion's recommendation to modify block 43 of the supplemental report by deleting "due to pregnancy." They note that the wording Petitioner specifically requested included "due to pregnancy"; that this reference to pregnancy can be considered proper for inclusion in the report, as it is necessary to explain Petitioner's unplanned transfer; and the Board considers that this reference, appearing in the context of the revised wording, will do Petitioner no harm.

In view of the above, the Board directs the following corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the following original enlisted performance evaluation report and related material, including the transmittal letter dated 8 March 1999, leaving in the record the supplemental report for the same period:


Date of Report	Reporting Senior	Period of Report	
31 Aug 98		From	To
		2 Jul 98	31 Aug 98

b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


Executive Director



7975-98

DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
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1610
PERS-311
15 March 2000

**MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS**

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: TM1(S [REDACTED])

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the comments on her performance evaluation for the period 2 July 1998 to 31 August 1998 be deleted or rewritten.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the report in question to be on file with a supplemental performance evaluation and cover letter. The member signed both reports acknowledging the contents of each report and her right to submit a statement. The member indicated she desired to submit a statement on the original report and did not desire to submit a statement on the supplemental report. No statement and endorsement has been received as the reporting senior indicated the supplemental report satisfies the member's rebuttal to the report in question.

b. The performance evaluation is a Detachment of Individual/NOB/Regular report. The supplemental report changes block-43, Comments on Performance.

c. The original report for the period 2 July 1998 to 31 August 1998 comments on the member's reporting onboard pregnant. Per reference (a), Annex N, paragraph N-14.h states medical conditions (including pregnancy) are not to be mentioned in performance evaluations unless necessary to explain other matters in the report.

d. Submission of the supplemental report was at the discretion of the reporting senior and is acknowledged by the reporting senior of the error in the original report.

e. Further review of the member's record revealed the performance evaluation for the period 22 February 1995 to 15 March 1996 missing from her record. If the member will forward a copy of the report we will have it placed in her digitized record.

f. The member proves the report to be unjust or in error.

3. We recommend removal of the original performance evaluation, the reporting senior's cover letter for the supplemental report leaving the revised report for the same period, and delete that portion in block-43, second sentence "due to pregnancy".



Head, Performance
Evaluation Branch